IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1001 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

THE STATE OF GUJARAT
Versus
CHUNILAL SAVJIBHAI KHANDAR & ANR

==========

Appearance :
MR KP RAVAL APP for Appellant

MR NISHANT LAKIYA for MR HRIDAY BUCH for Respondents

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/10/2007

ORAL JUDGMENT : (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure, against the judgment and order rendered by learned Additional Sessions Judge, 4th Fast Track, Junagadh, in Sessions Case No. 7 of 1988, whereby the present respondents, being accused of the Sessions Case, came to be acquitted by the Trial Court, for the offences punishable under Sections 302, 498-A to read with Section 34 of the Indian Penal Code.

2 Leave to Appeal granted. Appeal is admitted. Learned Advocate Mr. Nishant Lakiya for on behalf of learned Advocate Mr. Hriday Buch, requested the court to hear the matter finally as the Record and Proceedings from the Trial Court is available with us and that they would assist the Court with extra copies of the evidence and the documents produced before the Trial Court. The request is granted and Appeal is heard finally.

3 As per the prosecution case, Bhartiben, wife of respondent No.1 and daughter-in-law of respondent No.2 got burn injuries and died on 12th of June, 1987. It is the prosecution case that before two years of the incident, Bhartiben was married to respondent No.1 Chunilal

Savjibhai Khandar. Respondent No.1, deceased accused - father-in-law of the deceased and respondent No.2 - mother-in-law of the deceased were executing mental as well as physical cruelty upon her on the pretext that she had brought less dowry. In the month of June, 1987, Varshaben, younger sister of the deceased had been to the house of Bhartiben where Bhartiben made grievance against her in-laws and husband about the cruelty executed by them. On 12th of June, 1987, at about 8.00 a.m., deceased – accused – Savjibhai Gopalbhai Khandar and present respondents to implement the common object, in their house known as Shashikunj, situated at Junagadh, poured kerosene upon Bhartiben and set her to ablaze. She was shifted to hospital where at 4.00 p.m. she died. In this respect, one accidental death was noted before Junagadh Police Station as AD Information No. 38 of 1987 under Section 174 of the Criminal Procedure Code. PW-12 Kiritbhai Karsanbhai Bhuteia was entrusted with this inquiry. He recorded the statements of Bhikhalal Hardas, Ramuben Bhikhalal; Varshaben Bhikhalal on 3rd of July, 1987. On 15th of July, 1987 he made a report to the Sub-Divisional Magistrate, Junagadh, that the incident was of the accident. He also had recorded statements of deceased Bhartiben and neighbours of Shashikunj where the incident occurred. Even dying declaration of the deceased was recorded and after perusing those papers, PW-12 Kiritbhai Karsanbhai Bhuteia submitted the report

before the Sub-Divisional Magistrate, that the incident was of an accident and that no offence, whatsoever, was committed. It appears that thereafter a private complaint being Inquiry Case No. 1 of 1988 was preferred by Bhikhalal Hardas Parmar, in the Court of Chief Judicial Magistrate, First Class, against present respondents and deceased Savjibhai Gopalbhai Khandar for the death of his daughter Bharti, making grievance that, she was done to death by these three accused after pouring kerosene upon her and igniting her. The said complaint was forwarded by learned Chief Judicial Magistrate to Junagadh City Police Station for investigation by an officer of the rank of Deputy Superintendent of Police, under Section 156(3) of the Code of Criminal Procedure. The Order is dated 18.1.1988. It appears that in pursuance of this complaint, Dy. S.P., Junagadh, appears to have entrusted the investigation to PW-14 Rangrav Kundlik Patil and who recorded the statements of witnesses Bhikhalal Hardas, Harsukhlal Ramaniklal and Pushpaben Harsukhlal, on 10th of October, 1987 and 11th of October, 1987. He therefore submitted a report of `B' summary with the prosecution. The said report was not accepted by learned Chief Judicial Magistrate as the investigation was not carried out by an Officer of the rank of Dy. S.P. and, therefore, the papers were forwarded to the Police Station for the investigation by Dy. S.P., Junagadh in accordance with the order passed by learned Chief Judicial Magistrate, Junagadh, on

18th of January, 1988. Dy. S.P., Junagadh City Police took over the investigation of the said `M' Case No. 1/88 in July, 1997 and he recorded statements of Bhikhalal Hardas, Ramuben Bhikhalal; Varshaben Bhikhalal and Harsukhlal Ramniklal, etc. on 23rd of July, 1997. He recorded the statements of Pushpaben Harsukhlal, Shantilal Laljibhai Trambdiya etc on 16th of September, 1997. He also recorded the statements of Harilal Gopalbhai, Naran Narsinh, Mohan Bhovan, Damji Jeram, Mavji Manji and Devjibhai Hansrajbhai on 23rd of July, 1997. He also recorded the statements of Head Constable Hariprasad Shambuprasad Trivedi, who had conducted inquiry in Inquiry Case No. 1/88 and ultimately in pursuance of this investigation, a charge sheet came to be filed against the present respondents for the above said offence.

4 The learned Chief Judicial Magistrate, registered said charge sheet as Criminal Case No. 5193 of 1997 and thereafter the case was committed to the Court of Sessions, which was registered as Sessions Case No. 7 of 1998. Learned Additional Sessions Judge, framed charges against both the respondents vide Exhibit-1, on 5th of August, 2004 and each of the respondents pleaded not guilty and, therefore, prosecution examined as many as 14 witnesses and produced on record voluminous documentary evidence. After evidence of prosecution was

over, incriminating circumstances appearing against each of the respondents was brought to the notice of them and their defence was of total denial in a statement recorded by learned Additional Sessions Judge under Section 313 of the Code of Criminal Procedure. The learned Trial Judge thereafter heard the prosecution as well as defence in detail and came to the conclusion of acquitting both the respondents of the charges levelled against them and, hence, this Appeal.

5 Learned APP Mr. K.P. Raval on behalf of the State and learned Advocate Mr. Nishant Lakiya for learned Advocate Mr. Hriday Buch for the respondents were heard in detail in respect of this Appeal.

6 We have gone through the Record and Proceedings of the Trial Court minutely and threadbare. We have considered the vital features of the matter and reasonable probability arising out of the circumstances of the case. We have taken into account the appreciation of the evidence undertaken by the Trial Court and reasons assigned for the acquittal. We have taken into consideration the contentions raised by learned Counsels in this matter. We have scanned carefully the evidence recorded during trial after re-appreciating it to assess the reasons assigned by the Trial Judge for the acquittal.

7 PW-1 Dr. Govindbhai Laxmanbhai Maru, Exhibit – 12, examined by the prosecution, undoubtedly establishes that the death of Bhartiben was on account of burn injuries. Postmortem report is produced on record at Exhibit – 14 and Inquest Panchnama is produced on record at Exhibit-15. It has been deposed by PW-1 Dr. Govindbhai Laxmanbhai Maru that Bhartiben was pregnant, when she got burn injuries. In cross-examination PW-1 stated that looking to the circumstances, it might not be possible for someone to have poured kerosene upon the deceased. According to Doctor, it was possible that Kerosene might have been poured by the deceased herself. There were no marks of injury on the body of the deceased and that there was no smelling of kerosene on the clothes of the body. Thereafter, the witnesses examined by the prosecution, namely, PW-2 Bhikhalal Hardasbhai, father of the deceased; PW-3 Ramaben Bhikhabhai, mother of the deceased; Harsukhbhai Ramanikbhai, uncle of the deceased; PW-5 Pushpaben Harsukhbhai, aunt of the deceased, and Varshaben, Sister of the deceased, are the relatives of the deceased. Out of them, Pushpaben has not fully supported the prosecution case. While complainant Bhikhalal Hardasbhai and PW-8 Varshaben, sister of the deceased, have attempted to depose that cruelty was executed upon the deceased and while her sister Varshaben visited Vantali, Bhartiben expressed grievance about cruelty against her by in-laws and husband.

Thereafter, the incident occurred as above stated and the complainant as well as her wife and Varshaben reached at the hospital where Bhartiben was shifted. They found that the treatment was being given to her and while Bhikhalal Hardasbhai, complainant, asked about the incident, Bhartiben stated that the respondents had poured kerosene upon her and had set her to ablaze. She also stated not to pursue the matter further against her in-laws and husband because with her death, she was relieved. Thereafter, according to the case of these witnesses, in the presence of caste leaders, some compromise had taken place and accordingly present respondents had undertaken to built a room in the name of the deceased. However, the respondents backed out from their undertaking and, therefore, the complaint came to be filed by the complainant. While going through the cross-examination of each of the witnesses, it is found that in the statement which they offered in AD proceedings and thereafter also on 10th of October, 1987 and 3rd of July, 1987, Bhikhalal had stated that when they reached at the hospital, Bhartiben was conscious and on asking, she stated that while she was cooking in the morning, her clothes caught flames from the primus and she got burn injuries, and that was accidental. She also stated that there was no ill-treatment whatsoever from her in-laws. Bhikhalal stated further that he had no suspicion whatsoever about the death of her daughter. Bhartiben did not state before the police when first three

statements were recorded that any cruelty was executed upon Bharti and that Bharti had conveyed to this witness, that she was burnt by respondents. PW-3 Ramaben Bhikhabhai also in her examination in cross admitted that in a statement before the police recorded on 3rd of July, 1987, she stated that all of them had visited Bhartiben at Government Hospital at Junagadh and on asking by them, Bharti had conveyed that while she was cooking on a primus, she came in contact with the flames and got burned. In any of her statements before the police she stated that there was any cruelty executed upon the deceased. These contradictions which were asked in cross-examination were well proved by the defence. PW-4 Harsukhbhai Ramanikbhai stated that she was conveyed by Bharti that cruelty was executed upon her and Bharti had requested her to convey to her parents. In any of the police statements came to be recorded by the police during AD inquiry and thereafter in the investigation, in pursuance of the private complaint, this fact was not stated by this witness before the police. PW-5 Pushpaben, wife of Harsukhbhai Ramnikbhai and sister of Ramaben Bhikhabhai, mother of the deceased, did not support the prosecution case and turned hostile. PW-6 Devjibhai Hansraj and PW-7 Shantilal Laljibhai are examined by the prosecution at Exhibit – 28 and Exhibit – 29. PW-6 Devjibhai Hansraj was examined by the prosecution to prove the fact that this witness had been to the house of in-laws of deceased to

recover the material of dowry given to Bharti along with other person wherein respondent No.1 allegedly stated before these persons that he had burnt Bharti and that the relatives of Bharti were free to do anything they choose. However, this witness has not supported the prosecution case in any respect. Witness Shantilal Laljibhai stated that, he knew that Bharti, daughter of Bhikhabhai, had died due to burn injuries, but he could not remember whether he had been to the house of the in-laws of Bharti and any compromise had taken place. He stated that at Vantali in the house of Devjibhai Satwara, caste persons had gathered and it was decided that a room was to be built in the name of the deceased. PW-8 Varshaben, sister of the deceased, examined at Exhibit – 30, though in examination-in-chief, stated about the cruelty executed upon Bharti and about the fact that they had visited Junagadh Government Hospital where she had a brief talk with Bharti and in this conversion deceased expressed that she was ill-treated by her in-laws on the pretext that she had brought less dowry. While she was confronted with her police statement recorded on 3rd of July, 1988, she denied that she stated before the police that there was no cruelty or ill-treatment upon deceased Bharti from in-laws or her husband. She denied to have stated before the police that she had no suspicion upon any of the respondents about the death of Bharti. These contradictions are proved by the defence. PW-9 Mohanbhai Bhivanbhai examined at

Exhibit – 31 stated that after the death of Bharti, her relatives had been to the house of Bharti. At that time, some altercations between respondent No.1 and Bhikhabhai had taken place and respondent No.1 stated that Bharti was done to death by them and her relatives were free to do as they choose. He has been cross-examined by the defence in which he has stated that the altercations took place on account of the death of Bharti and altercations were started because Bhikhalal stated that they had burnt Bharti. He has been cross-examined by the defence. PW-11 Vaghabhai Pratapbhai, examined at Exhibit -33 was PSO In-charge of Junagadh City Police Station on 21.1.1988 and he received Inquiry Case No.1/88 from the Court of Chief Judicial Magistrate, Junagadh, which he recorded as`M' Case No. 1/88. The Investigation was entrusted to PSI Rangrav Kundlik Patil. PW-12 Kiritkumar Karsanbhai Bhuteia, examined at Exhibit – 36 was serving as PSI, Junagadh Police Station on 2nd of June, 1987 and he inquired in Accidental Death Entry No. 38 of 1987 and came to the conclusion that no offence was disclosed from the circumstances and, therefore, he made a report to Sub-Divisional Magistrate about the accidental death. He has been cross-examined by defence wherein it transpires clearly that all the witnesses stated before this witness that deceased herself stated about the accident and that her relatives also stated that the deceased had no grievance against her in-laws. The witness had

recorded the statement of deceased and dying declaration was also recorded. PW-13 Trivedi Shashikant Shantilal was serving as Deputy Superintendent of Police in Junagadh City Station during June, 1997 and he investigated `M' Case No. 1/88 after PSI Patel submitted `B' Summary report to the Chief Judicial Magistrate. According to witness, `B' Summary report was rejected by the learned Chief Judicial Magistrate and re-investigation was ordered, which investigation was entrusted to him. He recorded statements of the witnesses and submitted charge sheet. PW-14, Exhibit – 41, Rangrav Kundlik Patil was serving as PSI, Junagadh City Police Station, and he entrusted papers to PSI Kiritbhai Karsanbhai Bhuteia of accidental death No.38 of 1987 to submit final report before Sub-Divisional Magistrate, Junagadh. On 18th of June, 1987, complainant Bhikhalal made an application before the Home Ministry and that inquiry was entrusted to him. He recorded statement of Bhikhabhai Hardasbhai, Harsukhlal Ramaniklal, Pushpaben Harsukhlal, etc. From the Inquiry, he came to the conclusion that no offence was disclosed whatsoever even after re-investigating the said accidental death No. 38 of 1987.

8 This is all is the evidence of the prosecution.

9 The learned Trial Judge came to the conclusion that the

whole process of submitting charge sheet against the accused took about 10 years. The learned Trial Judge came to the conclusion that it has been established beyond doubt that twice in earlier inquiry and investigation, it was revealed before the police in no uncertain terms that the deceased died accidental death and none of the witnesses including parents of the deceased as well as her younger sister shown any suspicion upon any of the respondents. However, after 10 years of the incident when investigation was entrusted to Dy. S.P., after rejecting `B' Summary Report by learned Chief Judicial Magistrate, diametrically, contrary statements were given by the witnesses. The pretext which witnesses advanced for not stating about cruelty executed upon deceased and as to the homicidal death of Bhartiben earlier was that the respondent No.1 undertook to give some amount in the name of the deceased, by which a room was to be built for public purpose. However, respondent No.1 did not keep his promise and, therefore, a private complaint came to be filed by the father of the deceased and the stand and the tenure of the prosecution changed absolutely contrary to whatever stated by the prosecution witnesses earlier before the police. The learned Trial Judge rejected this probability, discussing this fact in para-25 of his judgment, on the ground that prosecution failed to establish beyond doubt that any compromise had taken place between the parties as going through the record of accidental death, in Inquiry

Case No. 38 of 1987 nowhere it comes out that such compromise had taken place. The learned Trail Judge, therefore, found that none of the witnesses was credible and reliable. The learned Trial Judge came to the conclusion that neither the offences under Sections 302, 498-A nor 306 could be established by the prosecution against any of the respondents.

10 We have gone through the evidence recorded and the papers produced by the prosecution. It clearly appears that two views emerged from the prosecution case itself. Soon after the death of Bhartiben in 1987, an Inquiry was conducted by Rangrav Kandlik Patil, PW-14 and PSI Kiritbhai Karsanbhai Bhuteia being Accidental Death Case No. 38 of 1987 wherein statement of the deceased as well as dying declaration of the deceased were recorded, which did not involve any of the respondents in the crime. None of the witnesses including parents and younger sister Varsha involved accused in the said crime. After filing of complaint before the learned Chief Judicial Magistrate, investigation was done by PSI, Junagadh Police Station, wherein also, statements of relatives of the deceased, who were examined before the Trial Court, were recorded and those statements did not involve any of the respondents in the crime and ultimately `B' Summary Report was preferred by the Investigating Agency. Upto this, in view of investigating agencies, no offence was disclosed against any of the accused.

However, the learned Chief Judicial Magistrate, First Class, Junagadh, did not accept `B' Summary Report and ordered further investigation which was to be carried out by Dy. S.P. wherein same witness took contrary stand and involved respondents in the crime. Therefore, charge sheet and trial. Thus, there are two views emerging from the prosecution case (i) not involving the accused and (ii) involving the accused. In these circumstances, as per the settled law, view favourable to the accused must be accepted by the courts. The Trial Court, therefore, acquitted the accused because the witnesses who turned diametrically opposite to what they stated earlier were not credible. The conclusion arrived by the Trial Court, therefore, could not be labelled as perverse, manifestly erroneous, palpably wrong or demonstrably unsustainable.

11 The scope of appeal against the acquittal is well defined by law. The orders against the acquittal cannot lightly be interfered unless it is found by the appellate court that the reasoning assigned by the trial court and conclusions arrived were so perverse that in any manner it cannot stand to reason. As discussed above, while assessing the reasons assigned by the Trial Judge and evaluating the conclusions, it is found that the Trial Judge has rightly taken the view to acquit the accused for the charges levelled against them as prosecution could not establish the

case against both the respondents beyond reasonable doubt. The judgment and order impugned in this Appeal, therefore, requires no interference. Hence, the following order.

"Appeal is dismissed."

(J. R. VORA, J.)

(M.R. SHAHA, J.)

pnnair